

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH KAMELGARD)
v.)
Plaintiff,)) 08 CV 3211
v.)) Judge Conlon
THE AMERICAN COLLEGE OF SURGEONS,)) Magistrate Judge Denlow
JOHN DOES "A", "B", AND "C" AS AGENTS)
OF THE ACS, and JERZY MACURA,)
Defendants.)

MOTION TO DISMISS

Defendant American College of Surgeons (the "College") hereby moves to dismiss Counts II and IV of Plaintiff Joseph Kamelgard's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). In support of its motion, the College states as follows.

1. Plaintiff sues the College and others with regard to a peer review of expert testimony he gave in a medical malpractice lawsuit.
2. Two of Plaintiff's five counts (Counts II and IV) pertain to the College, and the College seeks to dismiss both counts.
3. Count II is for defamation, but Plaintiff provides no detail regarding the allegedly defamatory statements—he does not even say what they are—and his defamation claim violates the commonly accepted *in haec verba* doctrine. In addition, the allegedly defamatory statements are time-barred under Illinois' one-year statute of limitations for defamation actions.
4. Even if he could identify the allegedly defamatory statements, it is clear from the context in which they were allegedly made (a quasi-judicial physician peer review process) that

under common law and federal and state statutes they are privileged and confidential, would not be admissible in evidence, and that the College is immune from damages.

5. Plaintiff's private facts claim (Count IV) fails for a more basic reason. Plaintiff sues for the disclosure of allegedly "private facts" even though he had disclosed the same facts months earlier. Plaintiff cannot sue on "private facts" that he publicized.

WHEREFORE, American College of Surgeons respectfully requests that this Court grant its motion and dismiss Counts II and IV of Plaintiff's Complaint with prejudice and award any other relief the Court deems proper.

Respectfully submitted,

AMERICAN COLLEGE OF SURGEONS

/s/ Steven P. Mandell

Steven P. Mandell (ARDC No. 6183729)
Steven L. Baron (ARDC No. 6200868)
Natalie A. Harris (ARDC No. 6272361)
Mandell Menkes LLC
333 West Wacker Drive, Suite 300
Chicago, IL 60606
Telephone: (312) 251-1000
Facsimile: (312) 251-1010
August 29, 2008

CERTIFICATE OF SERVICE

This is to certify that I have this date served a true and correct copy of the within and foregoing Defendant American College of Surgeons' Notice of Motion, Motion to Dismiss and Memorandum in Support of Motion to Dismiss by ECF to the following:

Myron Mackoff	Miles J. Zaremski
407 South Dearborn St., Ste. 1310	Zaremski Law Group
Chicago, IL 60605	707 Skokie Blvd., Ste. 600
	Northbrook, IL 60062

This 29th of August, 2008.

/s/ Steven P. Mandell